BORA LASKIN LAW LIBRARY
3 1761 04866 9733

MUNICIPAL AND PLANNING LAW

Casebook

STANLEY M. MAKUCH

PART II

FACULTY OF LAW

UNIVERSITY OF TORONTO

BORA LASKIN LAW LIBRARY
SEP 20 1999
FACULTY OF LAW
UNIVERSITY OF TORONTO

BORA LASKIN LAW LIBRARY
UNIVERSITY OF TORONTO

MUNICIPAL AND PLANNING LAW

Casebook

STANLEY M. MAKUCH

PART II

FACULTY OF LAW

UNIVERSITY OF TORONTO

MUNICIPAL AND PLANNING LAW

Table of Contents

PART II

Chapter 5

Introduction to Planning

Introduction 1

W.I. Goodman, ed. "Principles and Practice of Urban Planning" 2

S. Proudfoot, "Private Wants and Public Needs: The Regulation of Land Use in the Metropolitan Toronto Area" 9

Chapter 6

The Official Plan

Introduction

Ontario Economic Council, "Subject to Approval" 11

Conformity

Re Cadillac Development Corporation and City of Toronto (1974) 1 O.R. (2d) 21 (H.C.) 15

The Limits of Official Plans

Re Official Plan of Richmond Hill Planning Area (1980), 13 M.P.L.R. 87 (O.M.B.) 20

Re City of Brampton Planning Area Official Plan Amendment 75 (1982), 14 O.M.B.R. 482 (O.M.B.) 21

Upper Tier Municipality Official Plans

Campeau Corporation v. Township of Gloucester (1978), 6 M.P.L.R. 290 (O.H.C.) 23

The Provincial Role in Planning

White, "Ontario's Land Use Legislation" 26

Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

https://archive.org/details/canadianmunicipa02maku

Chapter 7

The Private Control of Land Uses

Introduction 31

Restrictive Covenants 32

Re Sekretow and City of Toronto (1973), 33 D.L.R. (3d) 257 (O.C.A.)

Building Schemes

Hyett, "Restrictive Covenants: An Appraisal of Building Schemes" 37

McGregor et al. v. Boyd Builders Ltd. et al. (1965) 54 D.L.R. (2d) 112 (O.H.C.) 40

Modification of Restrictive Covenants 42

Nuisance

Bottom v. Ontario Leaf Tobacco Co. Ltd., [1935] O.R. 204 (C.A.) 43

Fiss, "The Supreme Court - Forward" 45

Rogers, "The Growing Significance of Environmental Issues in the Development Approval Process" 46

Chapter 8

Zoning and Land Use Control

Introduction to Zoning 48

Introduction

Boston Globe, "Houston Looks for A Heart" 48

Makuch, "Zoning: Avenues of Reform" 49

The Scope of the Zoning Power 51

Exclusionary Zoning and the Scope of the Zoning Power

Village of Euclid v. Ambler Realty Co. Ohio. S.C.U.S. 1926. 272 U.S. 365 51

The *Bell* Case 57

Re Hutterian Brethren Church of Eagle Creek and Rural Municipality of Eagle Creek (1983), 21 M.P.L.R. 108 (Sask. C.A.) 72

Discrimination and Zoning

City of Toronto v. Mendelbaum, [1932] O.R. 552 (H.C.) 73

City of Verdun v. Sun Oil Co. Ltd., [1951] S.C.R. 222 75

Scarborough Township v. Bondi (1959), 18 D.L.R. (2d) 161 (S.C.C.) 76

Bad Faith

Re Cadillac Development Corp. and City of Toronto (1974), 1 O.R. (2d) 21 (H.C.79) . . . .

H.G. Winton v. Corporation of the Borough of North York (1978), 6 M.P.L.R. 1 (Ont. Div. Ct.) 81

The Administration of Zoning By-Laws

Polai v. City of Toronto (1972), 28 D.L.R. (3d) 638 (S.C.C.) 83

Prohibiting All Uses

R. v. Gibson Ex Parte Cromiller, [1959] O.W.N. 254 (Ont. H.C.) 85

Corporation of The City of Coquitlam v. Karamanolis (1978), 3 M.P.L.R. 112 (B.C.S.C.) 86

Planning and Land Value

The Common Law Position

Belfast Corporation v. O.D. Cars Ltd., [1960] A.C. 490 (H.L.) 88

The Current Canadian Position

Regina Auto Court v. City of Regina (1958), 25 W.W.R. 167 (Sask. Q.B.) 94

Re Simpson and City of Vancouver (1977), 65 D.L.R. (3d) 669 (S.C.C.) 96

Hauff et al. v. City of Vancouver (1981), 15 M.P.L.R. 8 (B.C.C.A.) 101

The Charter

The Queen in Right of New Brunswick v. Fisherman's Wharf Ltd. (1982), 7 C.R.R. 46 (N.B.C.A.) 104

Negligence

Welbridge Holdings Ltd. v. Metropolitan Corporation of Greater Winnipeg (1970), 22 D.L.R. (3d) 470 (S.C.C.) 107

City of Kamloops v. Nielsen et al. (1984), 26 M.P.L.R. 81 (S.C.C.) 112

Horton, "*Kamloops v. Nielsen*: Municipal Liability for Community Planning Negligence" 114

Chapter 9

Zoning Reforms and Development Control

Introduction 124

Limitations of Zoning 125

Re Mississauga Golf and Country Club [1963], 2 O.R. 625 (C.A.) 126

Reform of Zoning 129

Sanbay Developments Ltd. v. City of London (1974), 45 D.L.R. (3d) 403 (S.C.C.) 130

Re Cogan et al. and City of Toronto et al. (1974), 46 D.L.R. (3d) 481 (Ont. Div. Ct.) 134

Papolis v. Corporation of Borough of Scarborough (1978), 3 M.P.L.R. 302 (Ont. H.C.) 135

Development Control, Planning Act, s.41

Canadian Institute of Public Real Estate Companies et al. v. Corporation of the City of Toronto (1977), 1 M.P.L.R. 85 138

Canadian Institute of Public Real Estate Companies et al. v. City of Toronto et al. (1979), 24 N.R. 108 143

Quay West v. City of Toronto. Div. Ct. No. 260/89 147

Pepino, "Site Plan Control Procedure" 149

Demolition Control, Planning Act, s.33

A.W. Banfield Construction Ltd. et al. v. City of Oshawa et al. (1979), 6 M.P.L.R. 61 (Div. Ct.) 151

Lot Levies

Hudec, "Municipal Exactions and the Subdivision Approval Process: A Legal and Economic Analysis" 154

Laidlaw Environmental Services Ltd. v. Moore (Township) (1993), 12 C.E.L.R. (N.S.), 279 162

Ontario Home Builders Association v. York Region Board of Education (1993), 19 M.P.L.R. (2d), 1 165

Legislation

"Bill 20 - The Dawn of a New Era in Municipal Finance by Stanley B. Stein 172

Other

Stamm, "Development Charges in the Context of the Ontario Municipal Finance System" 207

Chapter 10

Pre-Existing Rights of Landowners

The Right to A Building Permit

Introduction 219

Ontario 220

The Basic Rule 220

Mandamus/Judicial Review

Traditional Approach 221

City of Ottawa et al. v. Boyd Builders Ltd. [1965], S.C.R. 408 222

New Approach

Woodglen & Co. Ltd. v. North York (1983), 23 M.P.L.R. 13 (Div. Ct.) 228

Appeal

Woodglen & Co. Ltd. v. City of North York (1983), 23 M.P.L.R. 18 (Co. Ct.) 231

Woodglen and Co. Ltd. v. Corporation of The City of North York (1984), 26 M.P.L.R. 40 (Ont. Div. Ct.) 233

McDonald's Restaurants v. Humm (1983), 24 M.P.L.R. 103 (Co. Ct.) 238

Order of Lane J in Sevendon Holdings Limited v. Michael Nixon, Chief Building Official of the Corporation of the City of Toronto 247

Oral Reasons of Lane J. in the same case 254

Endorsement of Archie Campbell J. at Divisional Court 256

Applicable Law 260

Dominion Stores Ltd. and Borough of Etobicoke (1982), 19 M.P.L.R. 88 (Ont. Ct. Div) 260

Revenue Properties Co. Ltd. and the Corporation of the City of Toronto
26 M.P.L.R. 165 (Ont. Co. Ct.) 262

Other Jurisdictions 264

Chapter 11

Continuing Rights of Landowners

Non-Conforming Uses

Introduction 265

Defining The Use

Central Jewish Institute v. Toronto, [1948] 2 D.L.R. 1 (Ont. S.C.) 266

Extension or Enlargement of Buildings

Adams v. Uzumeri (1983), 23 M.P.L.R. 316 (Ont. Co. Ct.) 270

Changing Uses

R. ex rel. Skimmings v. Cappy, [1953] 1 D.L.R. 28 (Ont. C.A.) 274

Abandonment of Uses

Gayford v. Kolodziej et al. (1959), 19 D.L.R. (2d) 777 (Ont. C.A.) 276

Amortization of Uses

City of Los Angeles v. Gage (1954), 274 P. 2d 34 277

Other Jurisdictions 280

Chapter 12

Process Requirements And The Municipality

Introduction 281

Access to Information

Makuch, Jackson "Freedom of Information in Local Government in Ontario" 282

Access to Information 285

Right to A Hearing

Municipal Councils, Police Commissions, and Boards of Education

Planning Act

Spence v. City of York (1985), 10 Admin. L.R. 241 (Ont. H.C.) 290

The Statutory Powers Procedures Act 299

Common Law

Atkinson et al. v. The Municipality of Metropolitan Toronto (1976), 12 O.R. (2d) 401 (C.A.) 299

Re Maple Leaf Mills and Point Edward (1979), 24 O.R. (2d) 685 (Div. Ct.) . 303

Planning Boards 305

Minister's Orders 305

Re Orangeville Highlands and A.G. of Ontario (1975), 8 O.R. (2d) 97 Div. Ct. 305

Subdivision Agreements

Homex Realty and Dev. Co. Ltd. v. Village of Wyoming (1980), 13 M.P.L.R. 234 (S.C.C.) 308

Committees of Adjustment and Land Division Committees 310

Nature of The Hearing Required

Re McMartin et al. v. City of Vancouver (1968), 70 D.L.R. (2d) 38 (B.C.C.A.) 311

The Ontario Municipal Board 316

Ladney v. Corporation of The Township of Moore (1984), 26 M.P.L.R. 140 (Ont. Div. Ct.) 317

Compendium: Municipal Freedom of Information and Protection of Privacy Act 319

Chapter 13

Administrative Review of Municipal Action

Introduction 324

The Jurisdiction of The Ontario Municipal Board

General

Re Township of North York Restricted By-Law (1960), 24 D.L.R. (2d) 12 (Ont. C.A.) 325

Kuchma v. Rural Municipality of Tache, [1945] S.C.R. 234 327

Rehearing

Re Merrens et al. and Municipality of Metropolitan Toronto, [1973] 2 O.R. 265 (D.C.) 328

The Ontario Municipal Board as Policy Maker - The Board's View

Member Values

Re Vaughan Planning Area Official Plan Amendment (1977), 6 O.M.B.R. 327 332

Government Policy

Re Township of Caledon Official Plan (1970), 2 O.M.B.R. 1 336

Planning Principles

Re Township of Loughborough Official Plan Amendment 10 (1985), 17 O.M.B.R. 96 (O.M.B.) 339

Financial & Economic Concerns

Re East York By-Law 7633, 27 September, 1966, unreported 342

Land Value And Planning

Re McGregor and Scarborough (1971), unreported 345

Minority Rights

Re Toronto Restricted Area By-Law 348-73 (1975), 4 O.M.B.R. 221 349

The Ontario Municipal Board as Policy Maker - The Court's View

Re Cloverdale Shopping Centre Ltd. and Township of Etobicoke, [1966] 2 O.R. 439 (Ont. C.A.) 355

Township of Innisfil v. Township of Vespra et al. and South Estates et al. (1981), 15 M.P.L.R. 250 (S.C.C.) 363

Petitions to Cabinet

Offman Holdings Ltd. v. Minister of Justice and A.G. Ontario (1980), 9 M.P.L.R. 152 (Div. Ct.) 365

Who Should Make Planning Decisions?

Tollefson v. Twp. of Gloucester (1976), 1 M.P.L.R. 11 (O.M.B.) 369

Forum: "The Role of The Professions in the Future Environment" 371

g:\sm\municipl\planning.toc